



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Route 99/Kettleman Lane (Route 12) Interchange Project Study Report - Cooperative Agreement

MEETING DATE: March 6, 1996

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council approve the Cooperative Agreement with San Joaquin County Council of Government (SJCOG) and authorize the City Manager to execute the Agreement.

BACKGROUND INFORMATION: The Route 99/Kettleman Lane (Route 12) Interchange Project is in the SJCOG Measure K Strategic Plan. The Cooperative Agreement is between SJCOG and the City of Lodi for the consultant to prepare a PSR. The PSR will include recommended interchange improvement alternatives, traffic forecasts, traffic operation analysis, Preliminary Environmental Analysis Report (PEAR), interchange geometrics and profiles, and cost estimates.

Over the past several months, Traffic Engineering staff has been working with a team from SJCOG, Caltrans, Nolte and Associates, City of Stockton, and City of Ripon staff in the consultant selection and preparation of the work plan. The team selected consultants for four major interchange projects in San Joaquin County. Greiner was the consultant selected for the City of Lodi's project and will prepare a Project Study Report (PSR).

Greiner will present the project to the City Council at the draft PSR stage. The presentation will focus on the recommended alternative designs. Greiner estimates the PSR to be completed in a nine-month time frame from start to final approval. However, if Caltrans requires additional traffic studies or significant expansion of the design alternatives, the PSR schedule could be lengthened.

The SJCOG Board has already approved the Cooperative Agreement. Staff recommends City Council approve the Agreement and authorize the City Manager to execute the Agreement.

FUNDING: SJCOG will use Measure K project funds to directly pay Greiner 100 percent of the project cost to prepare the PSR in an amount not to exceed \$187,665.


for Jack L. Ronsko
Public Works Director

Prepared by Paula J. Fernandez, Associate Traffic Engineer

JLR/PJF/lm

Attachment

cc: Associate Traffic Engineer
SJCOG, Attn: Steve Vandenburg
Nolte and Associates, Attn: Bob Bryer

APPROVED: 

H. Dixon Flynn -- City Manager

**COOPERATIVE AGREEMENT
ROUTE 99/KETTLEMAN LANE (ROUTE 12) INTERCHANGE
PROJECT STUDY REPORT**

This Cooperative Agreement, entered into this 9th day of February 1996, is between the San Joaquin County Council of Governments, acting as the Local Transportation Authority ("Authority") and the City of Lodi ("Sponsor").

RECITALS

WHEREAS, the parties desire to enter into a Cooperative Agreement for the preparation of a Project Study Report for a transportation improvement project in San Joaquin County pursuant to the authority provided by the San Joaquin County Local Transportation Improvement Plan and Ordinance which was approved by the voters of San Joaquin County on November 6, 1990; and

WHEREAS, the project under consideration is the Route 99/Kettleman Lane (Route 12) Interchange; and

WHEREAS, the project is eligible for funding under the Congestion Relief category of the Local Transportation Improvement Plan; and

WHEREAS, Sponsor desires to initiate the preparation of the Project Study Report for the project; and

WHEREAS, Sponsor has agreed that Authority may use Measure K funds allocated to the project, currently \$741,800 in the 1996 Draft Measure K Strategic Plan, to fund consultant services needed to prepare the Project Study Report; and

WHEREAS, Sponsor may, through future Cooperative Agreements, use the balance of Measure K funds for the project to pay for the remaining project development work and/or for construction;

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties have reached the following agreement:

AGREEMENT

**SECTION I
Covenants of Sponsor**

1.1. Project Study Report Application. The complete project description, scope of work, delivery schedule, estimate of cost by activity, anticipated amount and type of funds that will supplement Measure K funds, and the anticipated timing for release of Measure K funds for the

Project Study Report shall be specified in the application, which is attached as Exhibit "A," and incorporated herein by this reference.

1.2. Change In Project Scope. Sponsor agrees that a change in the project scope as described in Exhibit "A" may not be implemented until it has been approved by the Authority.

1.3. Eligible Reimbursement Costs. Sponsor is not eligible for reimbursement under this agreement. Authority will use Measure K project funds to directly pay 100% of any consultant costs incurred by consultants preparing the Project Study Report.

1.4. Sponsor's Staff Expenses. Sponsor shall direct and assist consultants at its own expense in the preparation of the Project Study Report.

1.5. Copies of Consultant Invoices and Project Reports. Sponsor may receive, upon request, one (1) copy of all invoices and progress reports submitted to Authority by every consultant, subconsultant, contractor, or subcontractor performing work related to the Project.

1.6. Use of Funds. Sponsor agrees that Authority shall use Measure K funds to fund consultant activities consistent with the scope of work described in Exhibit "A" or approved by the Authority pursuant to Section 1.2.

1.7. Completion of the Project Study Report. Sponsor agrees that it shall make a good faith effort to complete the Project Study Report in a timely manner, as defined under Exhibit "A", unless delays are caused by the Authority's failure to pay consultants.

SECTION II Covenants of Authority

2.1 Use of Funds Authority will use Measure K project funds to directly pay 100% of any consultant costs incurred by the Sponsor to prepare the Project Study Report.

2.2. Invoices and Progress Reports. The Authority shall receive all consultant progress reports and pay all consultant invoices. Starting one month after the execution of consultant contracts, Authority will make available to Sponsor copies of the consultant's monthly progress reports and invoices.

2.3 Authority Staff Expenses Authority's staff expenses for the administration of consultant contracts and participation in the Project Study Report process shall be funded from the Authority's administrative budget and not from the project's Measure K allocation.

2.4. Submittal of Documents. Authority shall provide Sponsor with copies of all executed contracts which relate to the Project scope as described in Exhibit "A" or approved by the Authority pursuant to Section 1.2. Authority shall retain records pertaining to the Project for a four (4) year period following completion of the Project.

2.5. Reimbursement of Construction and Other Costs. A separate agreement shall be entered into to obtain reimbursement for preparation of the Project Report and environmental document, final design, construction, contract administration, inspection and applicable right-of-way and utility relocation costs for the project.

SECTION III Mutual Covenants

3.1. Term. This Agreement shall remain in effect until discharged or terminated as provided in Section 3.2 or Section 3.14.

3.2. Discharge. This Agreement shall be subject to discharge as follows:

3.2.a. Breach of Obligation. If a party believes that the other is in breach of this agreement, that party shall provide written notice to the breaching party and the written notice shall identify the nature of the breach. The breaching party shall have thirty (30) days from the date of notice to initiate steps to cure any breach that is reasonably capable of being cured. If the breaching party diligently pursues cure, such party shall be allowed a reasonable time to cure, not to exceed sixty (60) days from the date of the initial notice, unless a further extension is granted by the non-breaching party. If the non-breaching party is not satisfied that there has been a cure by the end of the time for cure, the non-breaching party may seek available legal remedies.

3.2.b. Termination by Mutual Consent. This Agreement may be terminated at any time by mutual consent of the parties.

3.2.c. Discharge Upon Completion of Project. Except as to any rights or obligations which survive discharge as specified in Section 3.13, this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of the Project as certified by the Authority.

3.3. Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Sponsor:

3.3.a. That neither Authority, nor any officer or employee thereof, shall be responsible for, and Sponsor shall fully defend, indemnify and hold harmless Authority against any damage or liability occurring by reason of anything done or omitted to be done by Sponsor under the Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Sponsor shall fully defend, indemnify and hold the Authority harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Sponsor under this Agreement or in connection with any work, authority, or jurisdiction delegated to Sponsor under this Agreement.

3.3.b. That neither Sponsor nor any officer or employee thereof, shall be responsible for, and Authority shall fully defend, indemnify and hold harmless Sponsor against, any

damage or liability occurring by reason of anything done or omitted to be done by Authority under or in connection with any work, authority or jurisdiction delegated to Authority under the Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold the Sponsor harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Authority under this Agreement or in connection with any work, authority, or jurisdiction delegated to Authority under this Agreement.

3.4. Notices. Any notice which may be required under this Agreement shall be in writing and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below:

TO AUTHORITY:

Barton R. Meays
Executive Director
San Joaquin County
Transportation Authority
Post Office Box 1010
Stockton, California 95201-1010

TO SPONSOR:

Jack Ronsko
Public Works Director
City of Lodi
P.O. Box 3006
Lodi, CA 95241

Either party may change its address by giving notice of such change to the other party in the manner provided in this Section 3.4. All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

3.5. Additional Acts and Documents. Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.

3.6. Integration. This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

3.7. Amendment. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

3.8. Independent Agency. Sponsor renders its services under this Agreement as an independent agency and the Authority is also an independent agency under the Agreement. None of the Sponsor's agents or employees shall be agents or employees of the Authority and none of the Authorities' agents or employees shall be agents or employees of Sponsor.

3.9. Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

3.10. Binding on Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the Authority or as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

3.11. Severability. Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

3.12. Counterparts. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.

3.13. Survival. The following provisions in this Agreement shall survive discharge:

3.13.a. Sponsor. As to Sponsor, the following sections shall survive discharge: Section 1.4 (Staff Expenses), 1.6 (Application of Funds to the Project Study Report).

3.13.b. Authority. As to Authority, the following sections shall survive discharge: Section 1.3 & Section 2.1 (Authority will fund consultant activities), Section 2.2 (Authority receives all Invoices and Progress Reports), Section 2.3 (Staff Expenses), Section 2.4 (Submittal of Documents).

3.13.c. Both Parties. As to both parties, the following sections shall survive discharge: Section 3.2.a. (obligation which survives termination), and Section 3.3. (mutual indemnities).

3.14. Limitation. All obligations of Authority under the terms of this Agreement are expressly contingent upon the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure K. If for any reason the Authority's right or ability to collect or expend such sales tax proceeds is terminated or suspended in whole or part so that it materially affects the Authority's ability to fund the project, the Authority shall promptly notify Sponsor, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent. Any future obligation to fund this project or any other project or projects of Sponsor, not already specifically covered by separate Agreement, shall arise only upon execution of a new Agreement.

3.15. Attorneys' Fees. Should any litigation commence between the parties concerning the rights and duties of any party pursuant to, related to, or arising from, this Agreement, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' fees and costs of such litigation, or in a separate action brought for that purpose.

3.16. Time. Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.

3.17. Remedies Cumulative. No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.

3.18. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

3.19. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.

3.20. No Continuing Waiver. The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.

3.21. No Rights in Third Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

3.22. Signator's Warranty. Each party warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other party.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

SAN JOAQUIN COUNTY LOCAL
TRANSPORTATION AUTHORITY:

SPONSOR:

By: _____
Mr. Barton R. Meays
Executive Director

By: _____
Mr. Dixon Flynn
City Manager

ATTEST:

By: _____
Mr. Steven Dial
Manager Finance, Administration
and Public Information

By: _____
Ms. Jennifer Perrin
City Clerk

APPROVED AS TO FORM:

By: Randall Hays
Mr. Randall Hays
City Attorney

Exhibit A

APPLICATION FOR MEASURE K
PROJECT STUDY REPORT COOPERATIVE AGREEMENT
Route 99 \ Kettleman Lane (Route 12) Interchange Reconstruction

This application is a request for the City of Lodi to initiate a Project Study Report.

1. **Project Name, Location:** Route 99\Kettleman Lane (Route 12) Interchange.
2. **Project Sponsor:** City of Lodi.
3. **Contact Person, Phone No.:** Mr. Richard Prima, 333-6706
4. **Project Scope of Work:**

The Project Study Report will examine project alternatives:

- Widen Kettleman Lane (Route 12) under the Route 99 overcrossing to four through lanes plus turn lanes;
 - Realign the ramps and replace the overcrossing structure to the ultimate width for Route 99.
 - Relocate the frontage road north of Kettleman Lane (Route 12) east (Beckman Road).
5. **Expected Timing for Delivery of Project** (indicate if task is already completed, indicate any phasing of the project)

	<u>Start Date</u>	<u>Completion Date</u>
Prelim. Design/Eng.: (Project Study Report)	Feb. 1996	Nov. 1996
Environmental Review:	Dec. 1996	Jan. 1998
Right-of-Way Acquisition:	July 1998	July 1999
Plans, Specifications & Estimates	July 1998	July 1999
Construction	Jan. 2000	Dec. 2001

6. Estimated Project Cost (as applicable)

Prelim. Design/Engineering: (Project Study Report)	\$187,665
Environmental Review:	\$212,000
Right-of-Way Acquisition:	
Plans, Specifications & Estimates	\$424,000
Construction:	<u>\$5,404,800</u>
TOTAL:	\$6,228,465
Costs eligible for Measure K reimbursement in this contract:	Not Applicable.

**7. Expected Timing for Release of Measure K Funds by Quarter
(Project Study Report only)**

February 1, 1996	\$46,916
April 1, 1996	\$46,916
July 1, 1996	\$46,916
October 1, 1996	\$46,916

8. Source(s) and Amount of Matching Funds

Anticipated Source of Funds for Project Study Report:

<u>Source</u>	<u>Amount</u>	<u>Percentage</u>
Measure K	\$187,665	100%

CITY COUNCIL

DAVID P. WARNER, Mayor
PHILLIP A. PENNINO
Mayor Pro Tempore
RAY G. DAVENPORT
STEPHEN J. MANN
JACK A. SIEGLOCK

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6706
FAX (209) 333-6842

H. DIXON FLYNN
City Manager
JENNIFER M. PERRIN
City Clerk
RANDALL A. HAYS
City Attorney

February 27, 1996

Nolte and Associates
Attn: Bob Bryer
2950 Buskirk Ave., Ste. 225
Walnut Creek, CA 94565

San Joaquin County
Council of Governments
Attn: Steve Vandenburg
P. O. Box 1010
Stockton, CA 95201-1010

SUBJECT: Route 99/Kettleman Lane (Route 12) Interchange Project Study Report -
Cooperative Agreement

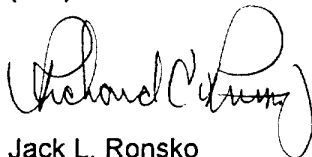
Enclosed is a copy of background information on an item on the City Council agenda of Wednesday, March 6, 1996, at 7 p.m. The meeting will be held in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to the City Clerk at 305 West Pine Street.

If you wish to address the Council at the Council meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Jennifer Perrin, City Clerk, at (209) 333-6702.

If you have any questions about the item itself, please call Paula Fernandez at (209) 333-6706.



Jack L. Ronsko
Public Works Director

JLR/lm

Enclosure

cc: City Clerk